

Report From Agency
DEPARTMENT OF HEALTH SERVICES
REPORT TO THE LEGISLATURE
CLEARINGHOUSE RULE 14-066

Chs. DHS 35, Outpatient Mental Health Clinics, 107, Covered Services

Basis and Purpose of Proposed Rule

Section DHS 35.16 (4) (b) requires as a condition for MA reimbursement, a physician's prescription for psychotherapy services. Similarly, ss. DHS 107.02 (2m) (a) 7. and 107.13 (2) (a) (intro.) and 2. and (b) 4. b., require a physician's prescription for mental health services, alcohol and other drug abuse services, and psychotherapy services as a condition for MA reimbursement. Pursuant to ss. 49.45 (30f) and 49.46 (2) (b) 6. f., fm., k., and Lr., Stats., the department is prohibited from requiring a prescription from a physician or other health care provider for psychotherapy services, medical day treatment services, or mental health and alcohol and other drug abuse services as a condition for MA reimbursement. Thus, the department proposes to conform ss. DHS 35.16 (4) (b), 107.02 (2m) (a) 7., and 107.13 (2) (a) (intro.) and 2. and (b) 4. b. to existing state law.

2013 Wisconsin Act 20 included funding to expand MA outpatient mental health coverage to in-home psychotherapy services for children. See, LFB Budget Summary. To effectuate this, the department proposes to revise s. DHS 107.13 (2) (a) 4. and (d) 3. to permit in-home psychotherapy services as a covered service for children.

Department Response to Legislative Council Rules Clearinghouse Recommendations

The department accepts the recommendations made by the Legislative Council Rules Clearinghouse and has modified the proposed rule where suggested.

Final Regulatory Flexibility Analysis

The proposed rules do not impose requirements on businesses, including small businesses. There were no comments made by small business during the public hearing.

Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis

Analysis

No changes were made to the rule's analysis.

Fiscal Estimate/Economic Impact Analysis

No changes were made to the fiscal estimate/economic impact analysis.

Public Hearing Summary

The department began accepting public comments on the proposed rule via the Wisconsin Administrative Rules website on December 5, 2014. A public hearing was held on January 13, 2015, in Madison. One person attended the hearing. Public comments on the proposed rule were accepted until January 13, 2015.

List of Public Hearing Attendees and Commenters

The following is a complete list of the persons who attended the public hearing or submitted comments on the proposed rule during the public comment period, the position taken by the commenter and whether or not the individual provided written or oral comments.

Commenter #	Name and Address	Position Taken (Support or Opposed)	Method of Commenting (Oral or Written)
1.	Linda A. Hall Wisconsin Association of Family and Children's Agencies 131 West Wilson Street Suite 901 Madison, WI 53703	Supports	Written

Summary of Public Comments and Department Responses

The number(s) following each comment corresponds to the number assigned to the individual listed in the Public Hearing Attendees and Commenters section of this document.

Rule Provision	Public Comment	Department Response
DHS 35.16(4)(b) and 107.02(2m)(a)7. 107.13(2)(a)(intro.) and 2.	Supports elimination of the physician prescription requirement for outpatient mental health services and advocated for the statutory change leading to the proposed administrative rule changes. [1]	The Department thanks the commenter for their support of the proposed change.
DHS 107.13(2)(a) 4.g. and (d)1. to 4.	The statutory changes to allow in-home mental health therapy were also advocated by the commenter. The proposed rule changes appear to appropriately accomplish this change. [1]	The Department thanks the commenter for their support of the proposed change.

Summary of Items Submitted with this Report to the Governor

Below is a checklist of the items that are attached to or included in this report to the Governor under s. 227.185, Stats.

Documents/Information	Included in the Body of the Report	Attached to the Report	Not Received by DHS
Final proposed rule -- Rule Summary and Rule Text Note: If a form has been revised or created as part of this rulemaking, a reference to the form and a description of how a copy of the form may be obtained is included in a note in the rule.		X	
Department response to Rules Clearinghouse recommendations	X		
Final Regulatory Flexibility Analysis	X		
Changes to the Analysis or Fiscal Estimate/Economic Impact Analysis			None
Public Hearing Summary	X		
List of Public Hearing Attendees and Commenters	X		
Summary of Public Comments and Department Responses	X		
Fiscal Estimate/Economic Impact Analysis		X	
Revised Fiscal Estimate/Economic Impact Analysis			None
Small Business Regulatory Review Board (SBRRB) statement, suggested changes, or other material, and reports made under s. 227.14 (2g), Stats. and			X

Documents/Information	Included in the Body of the Report	Attached to the Report	Not Received by DHS
The Department of Health Services' response to the SBRRB's statement, suggested changes, or other material and reports made under s. 227.14 (2g), Stats.			
Department of Administration (DOA) report under s. 227.115 (2), Stats., on rules affecting housing			X
DOA report under s. 227.137 (6), Stats., on rules with economic impact of \$20 MM or more			X
Public Safety Commission (PSC) energy impact report under s. 227.117 (2), Stats. and The Department of Health Services' response to the PSC's energy impact report s. 227.117 (2), Stats., including a description of changes made to the rule			X